Remarks

1. At page 2 of the Examiner's August 31, 2004 *Detailed Action*, the Examiner objects to the drawings under 37 CFR § 1.83(a). In particular, the Examiner states:

> "...[T]he 'left and right 'D' braces ... supporting the left and right curved bars' (cl.8) must be shown or the feature(s) canceled from the claim(s)...."

Since the Examiner requires a showing in the drawings of the left and right "D" braces, the Applicants assume that the Examiner has concluded that the drawings do not show the left and right "D" braces. The Applicants respectfully traverse and request reconsideration and withdrawal of that conclusion.

Attached hereto for reference as **Exhibit "A"** is a photostatic copy of Drawing Fig. 1 of the instant patent application. In Fig. 1, structures identified by Reference Numerals 38 and 44 have been highlighted in yellow. Those two highlighted structures are respectively oriented leftwardly and rightwardly in relation to the overall structure. Also, those structures are referred to in the Specification as "D" braces. (See page 12, line 24; page 13, line 1; page 13, line 6; page 13, line 7.) Since the left and right "D" braces are shown in the drawings, the Applicants respectfully request that the Examiner either withdraw the requirement that the "D" braces be shown in the drawings, or that the Examiner conclude that the requirement is satisfied by the drawings, as submitted. Upon making such conclusion, the Applicants respectfully request that the Examiner withdraw the requirement for the submission of corrected drawings.

2. The Examiner has rejected Claim 1 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,549,721 issued October 29, 1985, to *Stone*. The Applicant respectfully traverses said rejection, and the Applicants request that the Examiner, upon review of the traversing arguments set forth below, withdraw the novelty rejection of claim.

ARGUMENT TRAVERSING NOVELTY REJECTION

A. The fulcrum has been misidentified.

Stone identifies the fulcrum of its lifting mechanism at column 2, line 52 of its Specification, as "fulcrum bar 27". Referring to *Stone's* Drawing Figs. 1, 2, 3, and 4, the fulcrum bar 27 operates as the fulcrum of *Stone's* mechanism. The Examiner's *Detailed Action* does not refer to the fulcrum 27 identified in *Stone*. Instead, the Examiner identifies left and right curved surfaces at the distal ends of *Stone's* lift arms 39 and 41 as constituting *Stone's* fulcrum. It is a mechanical impossibility for both *Stone's* fulcrum bar 27 and the curved distal ends of *Stone's* lift arms 39 and 41 to serve as a fulcrum. *Stone's* fulcrum bar 27 mechanically disables the distal ends of its lift arms from acting as a fulcrum. Accordingly, the Applicants request that the Examiner reconsider and withdraw the conclusion that the distal ends of *Stone's* lift arms 39 and 41 constitute a fulcrum, and that the Examiner accordingly withdraw his conclusion that *Stone* constitutes an anticipating reference.

B. The fulcrum identified is inoperative.

The Examiner's August 31, 2004 *Detailed Action* does not explain how the curved distal ends of *Stone's* lift arms 39 and 41 could function as a fulcrum. *Stone's* Drawing Figs. 1, 2, 3, and 4, show that the curved distal ends of *Stone's* lift arms 39 and 41 are normally suspended in the air. Such structures do not contact any other structure which is capable of enabling the curved distal ends to function as a fulcrum. In order to cause the distal ends of *Stone's* lift arms 39 and 41 to contact with some other structure (such as a floor) and to function as a fulcrum, disassembly of *Stone's* mechanism would be required. The Examiner's *Detailed Action* does not mention disassembly of the mechanism of *Stone* to cause the curved distal ends of its lift arms to function as fulcrums. Notwithstanding, the Applicants assume that the Examiner specifies disassembly of *Stone's* mechanism.

Exhibit "B" attached hereto represents the Applicants' understanding of the Examiner's suggested disassembly of the apparatus of *Stone*. The line designated by Reference Numeral "A" represents a floor surface, such as a garage floor. Reference Numeral "B" identifies the structure which the Examiner has identified as a fulcrum. Point "C" represents the point at which the lever arm identified by the Examiner contacts the floor surface "A" (i.e., the point of maximum levering action). Point "D" identifies the point of contact between the lawn tractor's tire and the floor surface "A". At the point of maximum levering represented by **Exhibit "B"**, point "D"

lies slightly **below** the elevation of the floor "A". However, it would be a mechanical impossibility for the tire of the lawn tractor to rest below the floor. Given that the tire drawn in Fig. 4 must remain at or above floor level, the lifting mechanism represented by **Exhibit "B"** would not impart any lifting force upon the represented lawn tractor. If one were to disassemble the apparatus of *Stone* in order to attempt to utilize the mechanism's lift arm as a lever in the manner suggested by the Examiner, such attempt would be a failure, and such lift arm would prove to be incapable of imparting any lifting action upon the represented lawn tractor. The mechanical impossibility of utilizing the disassembled mechanism of *Stone* in the manner suggested by the Examiner further indicates that the instant invention is not anticipated by *Stone*.

C. *Stone* does not disclose tractor wheel mounting means.

Subsection (b) of Claim 1 of the instant application introduces the following structural limitation into Claim 1:

> "(b) tractor wheel mounting means fixedly attached to the forward end of the lift arm;"

Nomenclature in the *Detailed Action* which most closely approximates the tractor wheel mounting means element are the terms "cradle" and "tire cradle" which appear at page 3, subsection 3. The Applicant assumes that the Examiner's use of the terms "cradle" and "tire

cradle" are intended to refer to the "tractor wheel mounting means" element of Claim 1.

Stone's Specification and Drawings do not suggest that its cradles 95 engage or are capable of engaging the tires. As shown in *Stone's* Drawing Fig. 4, the cradling action of cradle 95 is directed solely and exclusively to chassis member "C", and the drawing indicates that cradle 95 does not contact the tire. Accordingly, the Applicants respectfully request that the Examiner withdraw the conclusion that *Stone's* chassis cradles 95 constitute tractor wheel mounting means within the meaning of Claim 1 of the instant application. Upon withdrawal of such conclusion, the Applicants request withdrawal of the citation of *Stone* as an anticipating reference.

D. *Stone's* chassis cradles could not be used to engage or cradle the tires.

It would be mechanically impossible to utilize *Stone's* chassis cradles 95 as tire cradles. The Specification and Drawings of *Stone* indicate that the left and right cradles 95 are laterally spaced so that they may support left and right lawn tractor chassis members which are positioned between the lawn tractor's left and right tires. If one of *Stone's* two chassis cradles 95 were caused to underlie and support one of a lawn tractor's tires, the opposite cradle 95 would be incapable of contacting and supporting any structure of the lawn tractor. The chassis cradles are not spaced for tire support.

Accordingly, utilization of *Stone's* chassis member cradles 95 as a tire cradle (as suggested by the Examiner) would be ineffective, and likely would cause toppling of the lawn tractor. Since *Stone's* chassis cradles could not be used for tire support, request is made that the Examiner withdraw the citation of *Stone* as an anticipating reference.

E. Application of case law.

According to the Federal Circuit, anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. [See *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).] However, it is not enough that the cited reference disclose all the claimed elements in isolation. Instead, the Federal Circuit holds that the prior art reference must disclose each element of the claimed invention arranged as in the claim. [See *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984).] The standard of *W.L. Gore & Associates*, supra, applies directly to the failure of *Stone* to teach or disclose a tractor wheel mounting means element. Unadvised use of the mechanism of *Stone* to attempt to support one or the other of a lawn tractor's tires would only result in toppling. Accordingly, following the standard of *W.L. Gore & Associates*, as applied to the tractor wheel mounting means element, the Examiner should withdraw the novelty rejection of Claim 1.

Alternately and additionally, the combined rulings of *W.L. Gore & Associates*, supra, and *Lindemann Maschinenfabrik GmbH*, supra, apply with particular force to the lever arm/variable fulcrum means/lift arm combination of Claim 1. The mechanism of *Stone* obviously has no variable fulcrum means because the distance between its fulcrum (i.e., fulcrum bar 27) and the distal ends of its lift arms 39 and 41 remains constant. Following *W.L. Gore & Associates*, the failure of *Stone* to teach or disclose a variable fulcrum means requires withdrawal of the anticipation reference. Even if the Examiner were to finally conclude that *Stone* does teach some type of variable fulcrum means, such element is not arranged as required by the claim. Subsection (d) of Claim 1 requires that the rearward end of the variable fulcrum means be fixedly attached to or formed wholly with the forward end of the lever arm. With respect to each lever arm which is potentially identifiable in the mechanism of *Stone*, it cannot be said that any have a forward end attached to the fulcrum bar 27. Accordingly, the elements of *Stone* are not arranged as required by Claim 1. Therefore, following *Lindemann Maschinenfabrik GmbH*, supra, the anticipation reference should, in any event, be withdrawn.

Wherefore, the Applicants respectfully request that the Examiner's novelty rejection of Claim 1 based upon Stone be withdrawn.

3. The Examiner has similarly rejected Claims 2-11 on grounds of lack of novelty and/or obviousness, also citing *Stone '721*. Each of Claims 2-11 depend from Claim 1, they each having Claim 1 as a common

parent claim. Accordingly, each of the arguments set forth above in support of a withdrawal of the Examiner's novelty rejection of Claim 1 set forth above are here restated in support of a withdrawal of the Examiner's novelty and obviousness rejections of Claims 2-11. Upon allowance of Claim 1, the Applicant respectfully requests allowance of Claims 2-11.

4. **In the event an Examiner's Amendment would result in allowance of any or all claims, the Applicants invite and would welcome such an amendment.**

Request for Payment of Fees by Deposit Account

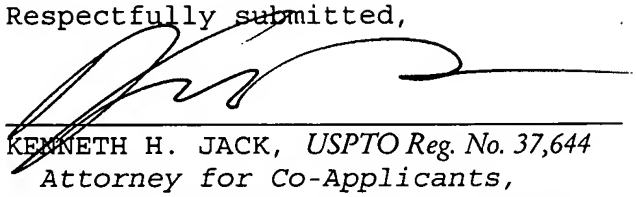
Authorization to Debit Deposit Account:

In the event that it is determined that any payment of fees is necessary to the receipt and filing of the within response, authorization is given to withdraw from the Davis & Jack, L.L.C. USPTO Deposit Acct. No. 50-0550 an amount necessary to pay any fees.

Prayer

WHEREFORE, the Applicants respectfully request that pending Claims 1-11 be allowed.

DATED: November 29, 2004. Respectfully submitted,



KENNETH H. JACK, *USPTO Reg. No. 37,644*
Attorney for Co-Applicants,
Larry D. Morris & Terry L. Emond

DAVIS & JACK, L.L.C.
P.O. Box 12686
2121 West Maple
Wichita, KS 67277-2686
(316) 945-8251
bdf/r2oa-morris-emond/04